

**REMARKS****Item 3 - Specification**

To comply with 37 CFR 1.71, the applicant has modified the specification has been modified in two locations to overcome the objection relating to how to not discard data packets. This has been reworded more correctly to state that the CRC packet discard is *bypassed*. In alternate embodiments the specification notes that the entire CRC check and discard facility can be completely *bypassed*.

**Item 4 - Information Disclosure Statement**

To comply with 37 CFR 1.98(a)(1) the applicant has included an Information Disclosure Statement in this mailing.

**Item 5 - Claim Objections**

The applicant has modified Claim 1 to overcome the objection of using an acronym. All instances where CMTS was used have been replaced by Cable Modem Termination System. A Cable Modem Termination System is a device well known to the art.

**Claim Rejections – 35 USC § 112****Item 6**

The applicant has reworded a portion of Claim 1 to overcome the objection to the negative limitation of "Not discarding packets in the tester with errors". That portion of the claim now reads: *Bypassing the tester's error checking and passing packets in the tester with errors*. In this way the necessity of describing how not to discard packets is eliminated.

**Item 7**

The applicant has rewritten the first part of claim 1 to define the invention more particularly and distinctly so as to overcome the technical objections and rejections and define the invention patentably over the prior art. The first portion of Claim 1 now reads: *A method for separately determining the performance of*

*the upstream and downstream portions of a cable network, the method comprising:*

**Item 8**

The applicant has rewritten part a) of Claim 1 to overcome this objection of the need for an antecedent basis. Part a) now reads: *Transmitting a test packet from a tester onto a portion of the network to the Cable Modem Termination System;*

**Item 9**

The applicant as rewritten and added to portions of Claim 1 to overcome the objection for the need for structural connections. The last portion of Claim 1 now reads: *Bypassing the tester's error checking and passing packets in the tester with errors; Checking the packet for a test pattern; and Identifying the packet as a test packet*

**Claim Rejections – 35 USC § 102**

**Item 10**

**The Rejection Of Claims 1- 15 on Valk Is Overcome**

The O.A. rejected Claims 1 – 15 on Valk. Claim 1 has been rewritten to define patentability over this reference. Applicant requests reconsideration of this rejection, as now applicable to claim 1 for the following reasons:

- 1) The novel features of Claim 1 produce new and unexpected results and function and hence are unobvious and patentable under this reference.

**The Reference and Differences Of The Present Invention Thereover**

Valk discloses a novel system for improving the reliability of digital transmission over a network. The objective of this invention is to improve the reliability by attempting to discard additional packets that have a higher probability of errors but are not discarded by the CRC or other error checking facility. The objective of this invention is to improve data integrity by decreasing the likelihood that a

packet with errors is passed through the system. ***No attempt is made in this system to determine the location of where these errors may have occurred, only to make a determination if they exist.***

**The Present Invention** discloses a novel system for measuring the service quality on the upstream of a cable modem service. The objective of this invention is to determine in a measurement device the number of packets that have been lost in the upstream path between the cable modem and the cable modem termination system. Since normal pings cannot distinguish between packets lost in the upstream or downstream direction, the present invention allows the tester to distinguish between test packets lost in the upstream or downstream and count the number lost over a period of time. ***No attempt is made to improve the data integrity as in Valk, but only to measure the amount of errored packets in the upstream direction so that the user of the tester can take the appropriate corrective action.***

**The Novel Features of Claim 1 Produce New and Unexpected Results and Hence Are Unobvious and Patentable Under This Reference**

The applicant submits that the novel features of Claim 1 are also unobvious and hence patentable under § 102 since they produce new and unexpected results over Valk.

These new and unexpected results are the ability of the applicants system to determine if packets have been lost in the upstream portion of the cable modem network and further make a measurement from this data. Valk makes no attempt to determine the location of errors.

**The Dependent Claims Are Patentable Over Valk**

Claims 2 – 15 incorporate all the subject matter of revised Claim 1 which makes them patentable over the reference.

### **Conclusion**

For all of the above reasons, applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore the applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

### **Conditional Request For Constructive Assistance**

Applicant has amended the specification and claims of this application so they are proper, definite and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,



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